THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.18328 OF 2005

DATED: 19-08-2005

BETWEEN;

M/s.Laxmi Talkies, rep.by proprietor N.S.Murthy,Rajamundry

..PETITIONER

VS.

The Collector, East Godavari District, Kakinada and two others.

..RESPONDENTS

THE HONOmURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.18328 OF 2005

ORAL ORDER

The petitioner claims to be a proprietor of Lakshmi Talkies, Rajahmundry, a theatre allegedly constructed by the petitioner in 1959. According to the petitioner, the land on which the theatre was constructed by him belonged to the National Senior Basic

school, Rajahmundry and was leased to him under a registered deed for 35 years. In 1973 the petitioner leased out the theatre to one Giri Babu for a period of ten (10) years. As Giri Babu did not vacate the premises even after the period of the lease, the petitioner filed a suit O.S.No.123 of 1987 on the file of the Court of Subordinate Judge, Rajahmundry seeking Giri Babu's eviction. The suit was dismissed by the judgment and decree dated 21-05-1993. The petitioner appealed in A.S.No.1730 of 1993. The appeal was allowed by this Court by the judgment dated 13-12-1999 and eviction was ordered. Thereupon and consequent on the appellate judgment, the petitioner claims to have resumed the possession of the theatre after an execution petition. Giri Babu appears to have preferred L.P.A wherein the Division Bench of this Court by the order dated 14-12-2000 directed the petitioner to deposit a sum of Rs.15,000/- every month to the credit of the suit.

After resuming the possession of the theatre as above, the petitioner applied for a B Form licence to the 1st respondent and was granted a temporary licence in Form-C pending consideration of his application for the B Form licence. The petitioner is exhibiting films in the theatre on the basis of the Form-C licence thus obtained.

While so, contends the petitioner the National Senior Basic School, Rajahmundry, which is the owner of the land was taken over by the Government and is under the management of an Executive Officer. Thereafter it would appear, an agreement of sale was entered into between the Executive Officer and the earlier sub-lessee of the petitioner-Giri Babu with regard to the land in question on which the theatre is constructed. Aggrieved thereby, the petitioner filed O.S.No.302 of 1993 seeking a declaration that the petitioner is exclusively eligible to purchase the site and for a mandatory injunction against the defendant/respondent. The suit O.S.No.302 of 1993 was dismissed by the judgment dated 31-12-2001 of the IV Additional Junior Civil Judge, Rajahmundry. Aggrieved,the petitioner preferred A.S.No.28 of 2002 before the District Court, Rajahmundry which was transferred to the V Additional District Judge, Rajahmundry. The appeal is pending. Subsequently on 04-09-2003 the Commissioner of Endowment is stated to have registered a sale deed in respect of the subject land in favour of one of the sons of Giri Babu. There upon the petitioner filed W.P.No.20630 of 2003 challenging the Commissioner's proceedings, which facilitated the registration of a sale deed infavour of Giri Babu's son. This writ petition was dismissed by this Court by the order dated 18-01-2005. Consequent on the dismissal, the petitioner contends, he moved for an amendment

in A.S.No.28 of 2002 for including a challenge to the registration of the sale deed by the Endowments Department in favour of Giri Babu's son. All these proceedings are pending.

While so on 18-05-2005 the petitioner applied to the 2nd respondent for renewal of the temporary (C-Form) permit. By the order dated 30-05-2005 the 2nd respondent rejected the petitioner's application for renewal of the temporary permit. Aggrieved, the petitioner preferred an appeal to the 3rd respondent and as the appeal was not being disposed of, filed W.P.No.12148 of 2005. By the Order of this Court dated 01-06-2005 W.P.No.12148 of 2005 was disposed of directing the 3rd respondent herein to consider and dispose of the petitioner's appeal expeditiously or at least his application for interim relief. Aggrieved by the order in the writ petition, the petitioner preferred Writ Appeal No.1255 of 2005, which is stated to be pending.

While so the 3rd respondent by the impugned memo bearing No.16913/Genl.A2/2005-06, dated 02-08-2005 called upon the petitioner to explain how he is entitled for renewal of licence and to send his reply or any other submissions to the 3rd respondent to facilitate the dispose of the appeal by the 3rd respondent. In this memo, paragraph No.2 records as under::

"with reference to above contentions, he is informed that as per the lease deed dated 21-02-1959, it was clearly mentioned that the lessee on the expiration of the term is to surrender to the lessor the vacant site after removing all constructions made by him and the cinema machinery installed therein. The super structure was constructed by the lessee in the site leased out. The period of lease covered by lease dated 21-02-1959 expired and that there is no further lease of the site. Therefore a lessee continuing in possession after the expiry of the lease period cannot be said to be in lawful possession. Hence, his possession seems to be neither legal nor lawful."

The petitioner states that the 3rd respondent acted illegally and without jurisdiction in calling upon him to make further submissions with regard to entitlement for renewal of the lease and that grievance is the basis for this writ petition. It is also contended by Sri V.V.N.Narasimham, the learned counsel for the petitioner that the 3rd respondent has already concluded that as the period of lease, covered by lease deed dated 21-02-1959, had expired and there is no further lease of the site in the petitioner's favour, the petitioner's continuance in possession on the expiry of the period of lease cannot be said to be lawful possession and having thus

prejudged the issue, the 3rd respondent is ritualistically asking the petitioner to make his further submissions.

None of the contentions urged by the petitioner commend acceptance by this Court. The petitioner appears to have entered into a lease with the National Senior Basic School, Rajahmundry which was admittedly the owner of the land, on which the petitioner constructed a theatre in 1959, and the period of lease has admittedly and demonstrably expired. In any event under the relevant law the National Senior Basic School appears to have been taken over by the State in the Endowments Department and the Endowments Department is in control and administration of the said land. The petitioner cannot have a leasehold relationship with the Endowments Department except in accordance with the provisions of the A.P.Charitable and Hindu Religious Institutions and Endowments Act,1987 or the relevant statutory Rules made there under. Section 82 of the said Act also spells out a determination of leasehold rights. In any event on the basis of the terms of the lease deed dated 2-12-1959, the 3rd respondent recorded what appears to be a clearly a *prima facie* conclusion that the continuance in possession by the petitioner as a lessee beyond the tenure specified in the lease of the year 1959 does not appear lawful. The impugned memo merely gives him an opportunity to make any further submissions that he may have in support of his claim to being in lawful possession of the property in question. If the petitioner does not wish to avail such opportunity he is at liberty to do so. The 3rd respondent cannot compel the petitioner to make any submissions in further support of the appeal if the petitioner does not choose to avail such facility. Apart from this liberty of the petitioner, which is clarified by this Order, the impugned memo of the 3rd respondent dated.02-08-2005 does not suffer from any other infirmity. The petitioner's apprehension that the 3rd respondent has already come to a conclusion as to the unlawful nature of his possession of the land in question does not appear to be correct from the language of the memo dated 02-08-2005,considered on its holistic perusal.

On the aforesaid analysis there are no merits in this writ petition. The writ petition is accordingly dismissed at the stage of admission.

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GODA RAGHURAM,J

19TH AUGUST,2005

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